

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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|--------------------------------|---|-------------------------------|
| CHRISTOPHER W. BENNETT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| vs. |) | CASE NO. 3:11-0004 |
| |) | JUDGE CAMPBELL/KNOWLES |
| |) | |
| |) | |
| TENNESSEE VALLEY VA |) | |
| HEALTHCARE SYSTEM, |) | |
| |) | |
| Defendant. |) | |

REPORT AND RECOMMENDATION

This matter is before the Court upon Defendant’s “Motion to Dismiss” for lack of subject matter jurisdiction. Docket No. 12. Defendant has submitted a supporting Memorandum of Law. Docket No. 13. The instant Motion was filed several months ago, but the pro se Plaintiff has failed to respond. Local Rule 7.01(b) states in relevant part, “Failure to file a timely response shall indicate that there is no opposition to the motion.”

In this action, the pro se Plaintiff has sued Defendant under Title VII of the Civil Rights Act of 1964. Docket No. 1. Plaintiff avers that Defendant failed to promote him and retaliated against him for having filed a charge of discrimination. Plaintiff claims discrimination on the basis of his race, color, and sex. Docket No. 1, p. 3.

In the instant Motion, Defendant argues that Plaintiff has named an improper party Defendant and has failed to name a proper federal defendant. Defendant argues that the only proper Defendant in a federal employment discrimination case is the head of the agency. 42

U.S.C. § 2000e-16(c); *Handcock v. Egger*, 484 F.2d 87 (6th Cir. 1988) (adherence to the statute's requirements is mandatory and case failing to name agency head dismissed). The relevant statute, 42 U.S.C. § 2000e-16(c), provides in part as follows:

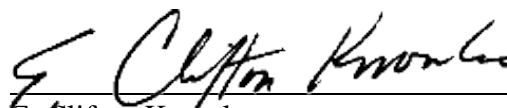
Within 90 days of receipt of notice of final action taken by a department, agency, or unit . . . an employee or applicant for employment, if aggrieved by the final disposition of a complaint, or by the failure to take final action on his complaint, may file a civil action . . . *in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.*

(Emphasis added.)

Plaintiff has failed to comply with 42 U.S.C. § 2000e-16(c).

For the foregoing reasons, the undersigned recommends that this action be DISMISSED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. Clifton Knowles
United States Magistrate Judge